

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RADFORD D. SMITH,

Plaintiff,

vs.

DIRECTOR, DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 3:06-CV-00357-LRH-(RAM)

ORDER

Plaintiff has submitted a Motion for Reconsideration (#23) of the Court's dismissal (#19) of this action. He notes that in addition to bringing claims pursuant to 42 U.S.C. § 1983, he also brought habeas corpus claims pursuant to 28 U.S.C. § 2254. The Court does not construe § 1983 actions to also be § 2254 petitions for several reasons. First, the filing fees and payment procedures are different. 28 U.S.C. §§ 1914, 1915. Second, a habeas corpus petitioner must first exhaust his available state remedies, such as a state post-conviction petition for a writ of habeas corpus that challenges the computation of his sentence. 28 U.S.C. § 2254(b). See also Nev. Rev. Stat. § 34.720. The documents before the Court indicate that Plaintiff has not pursued a state habeas corpus petition. Third, in a habeas corpus petition this Court deferentially reviews state-court decisions. 28 U.S.C. § 2254(d). Section 1983 has no such equivalent standard of review. Fourth, and most important, the law places substantial impediments on the filing of second or successive habeas corpus petitions. 28 U.S.C. § 2244(b). The Court's construction of this action as a habeas corpus petition might foreclose Plaintiff from seeking habeas corpus relief at another time. If Plaintiff wants to seek habeas corpus relief, he will need to file a petition in another action.

1 IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration (#23) is
2 **DENIED.**

3 DATED this 27th day of November, 2006.



7 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE